who have suffered severe injury in an accident and are unable to understand what is proposed to them or requested of them.

Office of Hartley F. Peart.

Very truly yours,
HOWARD HASSARD.

Subject: Legal right of a corporation to practice medicine.*

(COPY)

October 5, 1938.

Dr. George H. Kress
Secretary, California Medical Association
San Francisco, California

Re *People* vs. *Pacific Health Corporation.*

The following is a clipping from this morning's San Francisco *Examiner:*

Stay of Judgment for Health Firm.

The State Supreme Court, which recently held the activities of the Pacific Health Corporation were in violation of the Medical Practice Act, yesterday granted a stay of judgment to the health insurance firm pending an appeal of the case to the United States Supreme Court.

The Pacific Health Corporation is evidently going to try to take the case to the United States Supreme Court, and at all events to secure additional time which will be allowed to make the attempt.

Very truly yours,
(Signed): HARTLEY F. PEART.

Subject: Chiropractic Practice Act of California.‡

BOARD OF MEDICAL EXAMINERS
STATE OF CALIFORNIA

To the Editor:—Enclosed please find mimeographed copy of decision rendered by San Francisco Superior Judge Van Nostrand on October 6, 1938, which we trust will result in definitely defining the limitations of the practice of chiropractic in this state.

A copy has been forwarded to each District Attorney in the State of California.

Very truly yours,
C. B. PINKHAM, M. D.
Secretary-Treasurer.

MEDICAL JURISPRUDENCE†

By HARTLEY F. PEART, ESQ.
San Francisco

San Francisco Municipal Employees Health Service System: A Review of a Recent California Supreme Court Decision Upholding the Constitutionality of the System

Late in 1936, a proposal to establish a system of health service for San Francisco City Employees was submitted to a referendum vote of municipal employees who declared themselves in favor of a periodic payment health service plan by a large vote. Thereafter, a charter amendment was submitted by the Board of Supervisors to the electorate and upon approval by vote of the people was submitted to the Legislature. On April 14, 1937, the Legislature approved the proposed charter amendment. This charter amendment added Section 172.1 to the charter of the City and County of San Francisco. The main features of Section 172.1 are as follows:

1. A "health service system" for municipal employees is established to be administered by a health service board.

2. All municipal employees, except those exempted because of religious convictions, are included in the system. In addition, the health service board has power to make provisions for inclusion in the system of dependents of municipal employees, retired municipal employees and temporary municipal employees.

3. The health service board by a two-thirds vote of its members has power to adopt a plan for rendering medical care to the members of the system, or for indemnification of the cost of medical care or for obtaining and carrying insurance against such costs.

4. The board is further empowered to make rules and regulations for the transaction of its business, for the granting of exemptions to municipal employees who "are otherwise receiving adequate medical care" and for the admission of members to the system.

5. The charter amendment provides that upon adoption by the health service board of a plan it shall determine the monthly sum to be deducted from wages of members of the system and then certify such sum to the City and County Controller. Thereupon, the Controller is required to deduct said sum from the compensation of members and deposit all deductions with the Treasurer of the City and County to the credit and for the use of the health service system.

6. The power of the health service board to adopt a periodic payment plan for medical care or for indemnification or to obtain insurance against medical costs is specifically restricted in the following particulars: The board cannot restrict the right of members of the system to complete freedom of choice of physician or hospital, provided, only, that the board may require all physicians or hospitals rendering service to abide by its rules and regulations. The board cannot enter into any exclusive contracts for the rendering of medical services. The board must provide that services are to be furnished at uniform rates of compensation and such rates and any contract respecting the rendering of services is subject to review by and requires the approval of the Retirement Board of the City and County of San Francisco.

The foregoing are not all of the provisions of Section 172.1 of the charter, but they do constitute the most important matters governed.

As above stated, the Legislature approved Section 172.1 on April 14, 1937, and immediately thereafter the section went into full force and effect. Subsequently, the municipal employees elected a health service board which organized and commenced to function. After some months of seeming inactivity and after first endeavoring unsuccessfully to obtain approval by the Retirement Board of an exclusive contract (expressly forbidden by the charter amendment), the health service board formulated and submitted to the Retirement Board a plan known as "Plan No. 1." Prior to public presentation of Plan No. 1, the San Francisco County Medical Society had prepared and submitted to the health service board a proposed plan, most of the principles of which were contained in Plan No. 1, as adopted. This plan called for the rendition of medical services to members of the health service system by any physician in San Francisco who agrees to abide by the rules and regulations of the board and who agrees to accept as full compensation for his services his pro rata share of that portion of the funds collected from municipal employees available for payment of medical compensation. Plan No. 1 was submitted to the Retirement Board and approved by it.

After approval by the Retirement Board of Plan No. 1, the health service board then determined upon the sum of $2.50 a month as the monthly deduction from compensation of members of the health service system. Pursuant to the charter amendment, the health service board notified the

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* For full opinion of the Supreme Court of the State of California, see CALIFORNIA AND WESTERN MEDICINE, October, 1938, on page 306.

‡ Full opinion of Judge John J. Van Nostrand appears in this issue, on page 457.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

Controller to deduct $2.50 per month from the compensation of each municipal employee and to deposit with the City Treasurer to the credit and use of the health service system such sums so deducted. The Controller made the first monthly deduction and then refused to deposit the amount deducted with the City Treasurer until directed so to do by a court of competent jurisdiction.

Thereupon, the members of the health service board petitioned the Supreme Court of the State of California for a writ of mandamus directing the City Controller to deposit said monthly deductions with the City Treasurer as required by Section 172.1 of the charter. That petition is entitled *Butterworth* vs. *Boyd,* and was finally decided by the California Supreme Court in September, 1938. The opinion of the Court is printed in full in CALIFORNIA AND WESTERN MEDICINE, October, 1938, pp. 302–306.

The California Supreme Court held that Section 172.1 of the charter was a valid charter amendment not repugnant to the Constitution of the United States or the Constitution of the State of California and therefore, ordered the Controller to comply with the charter and deposit said monthly deductions with the City Treasurer.

Since the opinion has been published in full, we will not review in detail the rules of law announced by the Court. It should, however, be mentioned that the Supreme Court held the health service system to be a "municipal affair" and, therefore, a proper subject of municipal legislation.

It may well be asked what effect the decision may be expected to have with respect to the legal status of various group medicine and health insurance plans, compulsory or voluntary. The only answer that can be made is that the decision in *Butterworth* vs. *Boyd* upholds the validity of a compulsory health insurance plan for municipal employees, at the sole expense of such employees and contained in a city charter. It goes no further. A compulsory scheme involving the use of tax funds would present an entirely different problem. A compulsory plan, blanketing in *all* residents of a community falling in the low income brackets, would likewise present a different problem. The legal status (whatever it may be) of voluntary "closed-staff" group medical plans is in no manner affected by the decision.

SPECIAL ARTICLES

AMERICAN MEDICAL ASSOCIATION CASE MORE THAN CRIMINAL SUIT*

Broad Problem Cited Social Issue Involved May Reach High Court Hearings Resumed

The Department of Justice states it will resume the painstaking fitting together of the evidence on which it expects an extraordinary district grand jury to indict the American Medical Association and the District Medical Society for conspiring to obstruct the Sherman antitrust act by forming unlawful combinations in restraint of trade.

The proceedings, however, are regarded as more than a mere criminal prosecution, whatever its importance. Being prepared in proper legal form for ultimate consideration by the Supreme Court are issues of broad social significance. The misdemeanors alleged to have been committed in the row between American Medical Association and the Group Health Association, which brought the charges, are the peg on which these issues are hung.

CAN DOCTORS GIVE SOLUTION?

Were the juridical-sociologist experts who are directing the grand jury hearings from the council rooms of the New Deal to discard their policy of silence and explain their proceedings they might phrase these issues like this:

Has the problem of preserving or restoring the health of the individual American become so involved with the new and complex structure of the community that the healing art no longer can supply the solution by functioning on the traditional lines to which it is accustomed—and to which its most solidly entrenched organization, the American Medical Association, clings tenaciously?

Must the physician's economic individualism—which the American Medical Association claims it is safeguarding—give way to group practice or to some other system considered adapted to the needs of modern American society?

Should the medical profession be unable or unwilling to make these adjustments, does the Constitution empower any public agency to coerce them directly or indirectly?

PROBLEM CLOSELY STUDIED

A "totalitarian" settlement of such issues, it was pointed out last week, would be made by decree. However, the present grand jury is only one step in a determination which follows the historic American pattern—invoking many minds, many points of view, both lay and professional, from which will be distilled the new law of the land.

Weeks of study by Department of Justice experts preceded the calling of the extraordinary grand jury. The twenty-three engineers, salesmen, and businessmen over whom Foreman W. R. Bell presides daily in the new Police Court Building are the second stage of the inquiry.

Before them last week four special assistants to the Attorney General laid a general outline of the health problem of the United States. Four experts, three of them listed in "Who's Who," discussed the need they had found for some step to modernize the economics of the healing science.

* Excerpts from an article by Dillard Stokes.

CALIFORNIA STATE HUMANE POUND ACT

For purposes of record, this initiative act, as its title was given on the November 8, 1938, ballots, and the argument against its passage, appear below:

2. *Regulation of Pounds. Initiative Measure.* Defines "pounds" and regulates conduct thereof; prescribes duties of poundmasters; prohibits sale, surrender or use of unwanted or unclaimed animals in pounds for scientific, medical, experimental, demonstration or commercial purposes; exempting kennels, buildings or enclosures maintained on own premises by any accredited college, university or any medical research laboratory licensed under State Medical Practice Act, provided cats and dogs therein were bred on the premises or lawfully acquired under provisions of measure; directs that unclaimed and stray animals for which no bona fide home is available be put to death by an approved humane method.

ARGUMENT AGAINST INITIATIVE PROPOSITION NO. 2

What purports to be a simple humanitarian measure, but what is actually *antivivisection* legislation designed to throttle medical research into the causes and cures of disease, appears on the ballot under the misleading title of "State Humane Pound" act.

Having attempted long and unsuccessfully to pass antivivisection laws before the California Legislature, the antivivisectionists now appeal to the voters for the first time since 1922, when they were defeated by the overwhelming majority of 288,444 votes.

Convinced that the public cannot be stampeded into approving of antivivisection through any straight-forward presentation, the antivivisectionists now choose indirect means of accomplishing their purpose. This is their newest strategy, admitted in their own publications. They have chosen the dog "because the dog appeals to everyone." It is an entering wedge for similar laws everywhere.

Stray animals are weighed against babies by the antivivisectionists. Under the "Humane Pound" act the babies would lose!

Careful analysis by eminent lawyers discloses many "jokers" in the apparently innocuous "Humane Pound" act. The broad definition of "pound, publicly or privately conducted," makes everyone a "poundmaster" who accumulates dogs or cats for disposal, other than for sale as pets.